

ELLIS:LAWHORNE

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May 29, 2007

FILED ELECTRONICALLY AND VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: dPi Teleconnect, LLC, Complainant/Petitioner
v. BellSouth Telecommunications, Inc., Defendant/Respondent
Docket No. 2005-358-C, Our File No. 536-11404

Dear Mr. Terreni:

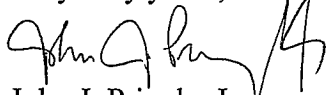
Enclosed please the original and one copy of **dPi's Reply to Response to Motion to Compel** for filing on behalf of dPi Teleconnect, LLC in the above-referenced docket.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it with the bearer of these documents.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,


John J. Pringle, Jr.

cc: Nanette Edwards, Esquire
Christopher Malish, Esquire
Mr. Brian Bolinger
all parties of record

Enclosures

THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2005-358-C

In Re:)
)
dPi Teleconnect, L.L.C. v.)
BellSouth Telecommunications, Inc.)

dPi Teleconnect, LLC's Reply to AT&T's Response to dPi's Motion to Compel

dPi Teleconnect, LLC ("dPi") files this reply to BellSouth Telecommunications, Inc.'s ("AT&T's ") Response to Motion to Compel.

Background

By law AT&T must sell telecommunications services to resellers at the same rate as to end users, which includes promotional rates. dPi resold AT&T's service and applied for reimbursement of the promotional rates from AT&T but was refused for various reasons. dPi sued AT&T for recovery of the promotional rates it should have been awarded. dPi sought through discovery amounts denied for each of the reasons for denial.¹ AT&T resists discovery on two bases: (1) AT&T has already provided the necessary information for dPi to compile what it seeks itself and (2) providing data to be used for strategic and tactical litigation decisions goes beyond the scope of discovery.

¹ A more complete background can be found in dPi's Motion to Compel.

Argument

Compelling production is proper because AT&T's sole legal basis for objecting to discovery - that dPi has the ability to discovery the data without production from AT&T - is patently false.

The law is clear: dPi may discover any matter, not privileged, which is relevant to the subject matter involved in the pending action. S.C.R.C.P. 26(b)(1).

AT&T argues that it should not have to provide dPi any breakdown of how much credit was denied for each reason for denial. The legal grounds for AT&T's contention is that, under Rule 33(c) of the South Carolina Rules of Civil Procedure, AT&T should not have to compile records that dPi can compile itself. dPi, according to AT&T's response, can determine the amount owed per reason for denial because it has (a) the requests for promotional credit and (b) the qualifications for the promotion.

This is simply not the case.

dPi cannot compile the record because it has no way of knowing the reason for denial of credit. dPi submitted each request for the precise reason that each **does** qualify for the promotions. Only AT&T knows why it denied any credit. dPi could not possibly be asked to guess what was in the AT&T employee's mind when he decided to reject the valid request, so it is **impossible** for dPi to compile amounts denied per reason of denial. Thus, Rule 33(c) has no application to the facts of this case.

Compelling production is proper because the data sought allows the Commission and all parties to fairly calculate damages.

AT&T tries to bolster its position by claiming that the compilation is merely an "aid [for] dPi in making strategic and tactical decisions." According to AT&T, such a request "goes far beyond what is required of AT&T."

First, AT&T cites no authority that one can resist discovery because it might be used in “tactical decisions.” In fact, the opposite is true. According to Rule 26(b), anything that is “relevant to the subject matter involved” may be discovered. Knowing the amount of damages so dPi can determine whether or not to pursue the claim is “relevant to the subject matter involved.”

Secondly, even if the rule AT&T states is correct, it has no application to this case. The data is not for “strategic and tactical” purposes. The discovery sought goes directly to amount of damages owed dPi, which is clearly relevant to this case. If the Commission determines that some of AT&T’s reasons for denial are proper and some are improper, it will be impossible to determine damages without the data sought in dPi’s Motion to Compel. The Commission will be put in a position of guessing at the amount of damages because AT&T would not let anyone know how much in credits is attributable to each reason for denial. This is the exact situation that the rules of discovery were enacted to prevent against. *Scott v. Greenville Housing Auth.*, 579 S.E.2d 151, 158 (S.C. App., 2003) (“The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game).

Conclusion

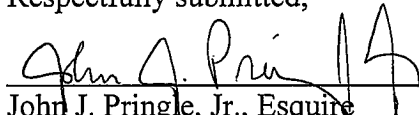
This reply can be summed up in one sentence: only AT&T knows why it rejected the credits.

dPi has no means to determine the information requested without AT&T's participation in the discovery process.

dPi has requested relevant material that will lead to, or itself be, admissible evidence. AT&T's two grounds for objection, that dPi can determine the information itself and that dPi is requesting strategic help, are both easily dismissed.

dPi requests that this commission grant dPi's motion to compel.

Respectfully submitted,



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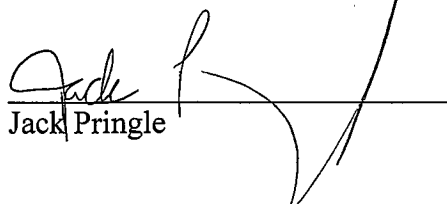
BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-358-C

IN RE:)	
)	
dPi Teleconnect, LLC,)	
Complainant/Petitioner)	
v.)	CERTIFICATE OF SERVICE
)	
BellSouth Telecommunications, Inc.,)	
)	
Defendant/Respondent)	

This is to certify that I have caused to be served this day, one (1) copy of **dPi's Reply to Response to Motion to Compel** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

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1600 Williams Street
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Columbia SC 29201

Nannette Edwards, Esquire
Office of Regulatory Staff
Legal Department
PO Box 11263
Columbia SC 29211



Jack Pringle

May 29, 2007
Columbia, South Carolina